

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ASHLEY IMMING,

Plaintiff,

v.

No. 2:23-cv-0378 GJF/DLM

OSVALDO DE LA VEGA; MESILLA
CAPITAL INVESTMENTS, LLC;
SOUTHWEST HEALTH SERVICES, P.A.;
MESILLA CAPITAL INVESTMENTS DE
MEXICO, S. DE R.L.;

Defendants.

AMENDED ORDER AWARDING ATTORNEY'S FEES¹

THIS MATTER is before the Court on Plaintiff's motion for attorney's fees. (Doc. 186.)

Having considered the motion and noting that the Court already granted Plaintiff's motion to compel and asked Plaintiff to submit a brief in support of their request for fees and costs, (Doc. 185), the Court finds it should be **GRANTED**.

On October 25, 2024, the Court granted Plaintiff's motion to compel and ordered Defendants to fully respond to Request for Production No. 16; Interrogatories Nos. 16 and 18; Request for Documents Nos. 10, 11, and 17; and Request for Admissions Nos. 4, 5, 6, and 7. (Doc. 185.) The Court found that "Defendants' objections to the discovery requests were not substantially justified, and they must pay Plaintiff's attorney's fees related to the Motion to Compel." (*Id.*) Accordingly, the Court ordered briefing on the issue and Plaintiff filed motion in support of the request. (Doc. 186.) Defendants did not file a response.

In his motion, Plaintiff seeks a total of \$2,825.00 in attorney's fees for 11.3 hours at an hourly rate of \$250.00. The Court finds that Plaintiff's billing request is reasonable for the time

¹ The Court enters this Amended Order to correct the calculation of the gross receipts tax.

spent but not for the rates requested. In the Southern New Mexico and El Paso, Texas, legal market area, the prevailing hourly rate for experienced attorneys is \$325. *See MVT Services, LLC, v. Great West Casualty Co.*, 18cv1128 GJF/GBW (D.N.M.), ECF 315 at 15-16. Here, Mr. Hibner is an associate attorney with less than 10 years of experience and notably, in the New Mexico state court action that preceded this suit, Plaintiff sought and received attorney's fees for the work Mr. Hibner performed but only at the hourly rate of \$180.² Accordingly, the Court reduces his hourly rate to \$225 to conform to the prevailing legal market.

Additionally, the Court finds that none of the exceptions to Rule 37(a)(5) apply to Plaintiff's fee request because Plaintiff attempted to confer with Defendant and obtain the disputed information without court action, Defendant's nondisclosure was not substantially justified, and no other circumstances make an award of fees unjust.

IT IS THEREFORE ORDERED that:

- 1) The motion for attorney's fees is **GRANTED** (Doc. 186);
- 2) Defendants Mesilla Capital Investments, LLC and Osvaldo De La Vega shall pay within 14 days of this order: \$2,542.50 in attorney's fees (11.3 hours x \$225/hour) and \$204.99 in New Mexico Gross Receipts Tax (\$2,542.5 x 8.0625%).



DAMIAN L. MARTINEZ
UNITED STATES MAGISTRATE JUDGE

² *See Imming v. De La Vega et al*, No. D-307-CV-2017-00389 (Feb. 6, 2020).